did consider the respondent's previous convictions, she took into account the small quantity of heroin involved as a principal mitigating factor. Section 173(m)(2) of the Criminal Procedure Code provides:

"If the court finds the accused guilty or if a plea of guilty has been recorded and accepted the court shall pass sentence according to law."

A "sentence according to law" means that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles. In assessing sentence, one of the main factors to be considered is whether the convicted person is a first offender. It is for this purpose that before passing sentence, a Magistrate is required to call for evidence or information regarding the background, antecedent and character of the accused. Where the convicted person has previous records and admits them as correct, the court must consider whether the offence or offences committed previously were of similar nature as the one with which he is presently charged. The court must then consider the sentences imposed in the previous convictions for similar offences to determine whether they have had any deterrent effect on him. Where he is found to be a persistent offender for a similar type of offences, then it is in the interest of justice that a deterrent sentence should be passed and, in such a case, unless there are exceptional circumstances, the quantity, nature or value of the subject-matter of the offence with which he is currently charged can very rarely constitute a mitigating factor.

In the present case, the learned Magistrate failed to take into account that in the two previous convictions for opium offences, the respondent had been sentenced to one year imprisonment in April 1977 and six months' imprisonment in October 1979. The present drug offence was committed in November 1980. Coupled with the other three previous convictions involving thefts for which various terms of imprisonment were passed, the Magistrate should not have found the quantity of 0.21 gms of heroin — the subject-matter in the present charge — as a mitigating factor in the absence of other exceptional circumstances. On the contrary, this fact should have been taken against him on the ground that despite the sentence of imprisonment on the two previous drug offences, the respondent had continued to flout the law by promoting himself from being an illegal possessor of opium to one of heroin. In my view, the learned Magistrate had misdirected herself on the fact and the law, and the sentence of eight months' imprisonment is manifestly wrong and inadequate as a deterrent for the accused and as well as for would-be offenders. In the circumstances, I allow this appeal and enhance the sentence from eight months' imprisonment to eighteen months' imprisonment to take effect from date of his arrest.

One final point regarding the previous record of a convicted person. In this case, although the previous convictions were admitted to be correct by the respondent, their particulars were not recorded in the notes of proceedings. Where a convicted person has a previous record, it is the duty of the Magistrate to take down the detailed particulars of the previous offences. Alternatively, a photostat copy or a certified copy of the previous record should be produced and marked as an exhibit. Personally, I would adopt the alternative method which, I think, is more convenient and would save judicial time. In this appeal, I have to obtain a copy of the previous record from the Deputy Public Prosecutor.

*Appeal allowed.*
*Sentence enhanced.*

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## PUBLIC PROSECUTOR v. CHUNG KWONG HUAH

**[O.Cr.J. (Chan J.) March 25, 1981]**
**[Ipoh — Perak Criminal Trial No. 8 of 1977]**

*Criminal Law and Procedure — Sentence — Unlawful possession and use of firearms.*

*Firearms — Unlawful possession and use — Sentencing policy — Firearms (Increased Penalties) Act, 1971, ss. 3 & 9.*

When the courts know that the unlawful possession and use of firearms are prevalent, then the time has come for the courts to show their disapproval by acknowledging that offences of this kind are grave and serious crimes and that those who indulge in them must expect a severe sentence.

The public is entitled to be protected and it is not likely to be so protected if lenient sentences are passed.

*Cases referred to:-*

(1) *Lee Chow Meng* v. *Public Prosecutor* [1976] 1 M.L.J. 287.
(2) *Reg.* v. *Davies* (1978) 67 Cr. App. R. 207, 210.
(3) *Reg.* v. *Sargeant* (1974) 60 Cr. App. R. 74.
(4) *Public Prosecutor* v. *Teh Ah Cheng* [1976] 2 M.L.J. 186, 188.
(5) *Reg.* v. *Blake* [1962] 2 Q.B. 377, 383.

CRIMINAL TRIAL.

*Lee Lim Huat* for Public Prosecutor.

*K. Kumarendran* for the accused.

*Cur. Adv. Vult.*

**Chan J.:** The accused Chung Kwong Huah pleaded guilty to two charges; one alleging unlawful possession of a Smith & Wesson .32 revolver contrary to section 9 of the Firearms (Increased Penalties) Act, 1971, as amended, and the other alleging unlawful possession of six rounds of .32 ammunition contrary to section 3 and punishable under section 9 of the Arms Act, 1960. I sentenced him to concurrent terms of ten years' imprisonment and six strokes, and three years' imprisonment respectively.

Mr. Kumarendran has said all that could be said for him. He submitted that the accused has an aged mother to support and is the sole provider for his family. Although he was not a first offender (he has a previous conviction for possession of heroin), he urged the court not to take that into account. The accused had pleaded guilty and that should be taken into account.

In recent years, there have been far too many cases of robbery being committed with the use of firearms. Defenceless men and women have been robbed and sometimes brutally attacked by armed

men. Police officers have been shot at and some were injured or even killed by these ruthless men. Robberies and crimes of violence are almost daily occurrences and in many cases firearms were used; see *Lee Chow Meng* v. *Public Prosecutor*.[1] When the courts know that the unlawful possession and use of firearms are prevalent, then the time has come for the courts to show their disapproval by acknowledging that offences of this kind are grave and serious crimes, and that those who indulge in them must expect a severe sentence. I repeat, because they accurately represent my view, the words of Lawton L.J. in *Reg.* v. *Davies*,[2] where he said:

"What then is the right sentencing policy in this class of case? ... There are of course the classical considerations relevant to all sentences: retribution, deterrence, prevention and rehabilitation.... At one time it was fashionable to suggest that retribution ought not to enter into sentencing policy. That opinion, I think, is not held as strongly now as it was a few years ago. The reason is manifest; the courts have to make it clear that crime does not pay and the only way they can do so is by the length of sentences. Sentences show the court's disapproval, on behalf of the community, of particular types of criminal conduct."

See also *Reg.* v. *Sargeant*.[3] This is what Lawton L.J. said at page 77: —

"What ought the proper penalty to be? ... (The) classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.

I will start with retribution: The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand courts must not disregard it. Perhaps the main duty of the court is to lead public opinion. Anyone who surveys the criminal scene at the present time must be alive to the appalling problem of violence. Society, we are satisfied, expects the courts to deal with violence....

I turn now to the element of deterrence.... There are two aspects of deterrence: deterrence of the offender and deterrence of likely offenders. Experience has shown over the years that deterrence of the offender is not a very useful approach, because those who have their wits about them usually find the closing of prison gates an experience which they do not want again. If they do not learn that lesson, there is likely to be a high degree of recidivism anyway. So far as deterrence of others is concerned, it is the experience of the courts that deterrent sentences are of little value in respect of offences which are committed on the spur of the moment, either in hot blood or in drink or both. Deterrent sentences may very well be of considerable value where crime is premeditated. Burglars, robbers and users of firearms and weapons may very well be put off by deterrent sentences."

In my judgment, these two factors, retribution and deterrence operate in this case. As for retribution, the time has come for the courts to show their abhorrence of offences involving the possession and use of firearms. Something has to be done to curb the unlawful possession and use of such weapons before the situation gets out of hand. "(It) must be made abundantly clear" said Abdoolcader J. in *Public Prosecutor* v. *Teh Ah Cheng*[4]

"that in the light of the appalling increase in crimes involving violence and the unlawful possession and use of lethal weapons, society is crying out 'enough is enough' and is no longer in any mood to tolerate such offenders."

The public is entitled to be protected and it is not likely to be so protected if lenient sentences are passed. On deterrence, Abdoolcader J. said in the same case (at 187):

"I would think that in the present state of things the sobering effect of a deterrent sentence can be usefully extended to unlawful and unauthorised possessors of firearms and ammunition as well in view of the potential hazard they pose. Deterrence in this case would be that of the (accused) and likely offenders similarly inclined, but there is an ancillary but no less important aspect to deterrence in cases involving unlawful possession of firearms in preventing the possible progression from mere possession to sinister user."

The man who carries a gun has the capacity to use it for it is all too easy to translate from mere possession into actual user with disastrous results.

I would like to cite one particular passage from the judgment of Hilbery J. in *Reg.* v. *Blake*[5] where he said:

"It is of the highest importance, perhaps particularly at the present time, that such conduct should not only stand condemned, should not only be held in utter abhorrence by all ordinary men and women, but should receive, when brought to justice, the severest possible punishment. This sentence had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others, and it was meant to be a safeguard to this country."

I share those views and I am sure that they are shared by all ordinary men and women in this country. I think they apply in this case.

*Order accordingly.*

Solicitors: *Kumar, Chan & Chia.*